No. 85-759

(4)

Supreme Court, U.S.
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IN THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1985

THE STATE OF MARYLAND,

Petitioner,

v.

HAROLD GARRISON

Respondent.

ON WRIT OF CERTIORARI TO THE
COURT OF APPEALS OF MARYLAND

BRIEF FOR THE PEOPLE OF THE STATE OF CALIFORNIA AS AMICUS CURIAE

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QUESTION PRESENTED

Does a police officer's reasonable mistake of fact in identifying the premises to be searched constitute "unreasonable" conduct within the meaning of the Fourth Amendment, thereby invoking the exclusionary rule?

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INTEREST OF THE PEOPLE OF THE STATE OF CALIFORNIA

This case exemplifies the recurrent application of the exclusionary rule to sanction mistakes of fact which, because made by policemen acting reasonably,

cannot be deterred and may not fairly be characterized as "unreasonable" conduct within the meaning of the Fourth Amendment.

The People of California, like the citizens of Maryland, have a compelling interest in protecting the reliability of verdicts in their criminal prosecutions from such applications of the suppression doctrine. That interest brings the People of the State of California before this Honorable Court as amicus curiae in support of petitioner.

SUMMARY OF ARGUMENT

Amicus doubts that this is an exclusionary rule case. Hill v. California, 401 U.S. 797 (1971) teaches that a police officer's reasonable misidentification of a person lawfully subject to arrest does not result in an "unreasonable" seizure within the meaning of the Fourth Amendment. Although Hill considered a

warrantless arrest, the police would have been in no worse position for having obtained a warrant. An officer's reasonable mistake as to the identity of the person named in his arrest warrant is not constitutionally different from an officer's reasonable mistake as to the identity of the premises described in his search warrant. The underlying principle is that an officer's reasonable mistake of fact is not "unreasonable" police conduct under the Fourth Amendment. Unfortunately, the state appellate court was indifferent to the reasonableness of the mistake of fact made by Baltimore police in securing and executing a search warrant for the premises of respondent Garrison.

Assuming this is an exclusionary rule case, however, the state high court's failure to consider the reasonableness of the officers' actions again

flaws its decision. The deterrent effect of the exclusionary rule is weakest where the illegality sanctioned results from a reasonable misapprehension of relevant facts. A decision suppressing evidence may tell the police what law they must follow henceforth, but such a decision cannot alter their future perception of physical facts. Michigan v. Tucker, 417 U.S. 433, 447 (1974), broadly recognized this inherent limitation of the suppression doctrine. United States v. Calandra, 414 U.S. 333, 348 (1974), restricted the application of the exclusionary rule "to those areas where its remedial objectives are thought most efficaciously served." These limitations did not enter into the decision to suppress evidence made below. Because it failed to consider [illegible] the substantive and remedial implications of the reasonableness of the Baltimore officers' good

faith mistake of fact, the judgment of the Court of Appeals of Maryland must be reversed.

ARGUMENT

A POLICE OFFICER'S REASONABLE MISTAKE OF FACT IN IDENTIFYING PREMISES TO BE SEARCHED IS NOT, WITHIN THE MEANING OF THE FOURTH AMENDMENT, "UNREASONABLE" CONDUCT INVOKING THE EXCLUSIONARY RULE.

Two decisions of this Court lead by different paths to a single conclusion: the Court of Appeals of Maryland erred in suppressing evidence seized from Harold Garrison's apartment. Those decisions, not cited in the state court opinion, are Hill v. California, 401 U.S. 797 (1971) and Michigan v. Tucker, 417 U.S. 433 (1974).

A. An Officer's Reasonable Mistake Of Fact Is Not "Unreasonable" Conduct Under The Fourth Amendment.

Hill v. California excused a police officer's reasonable mistake of fact.

Having probable cause to believe Hill had committed armed robbery, the police went to his apartment without a warrant. Miller, "who fit the description of Hill received from various sources," answered the door. 401 U.S. 799, 803. The officers, discrediting Miller's personal identification, his explanation for his presence in Hill's apartment, and his professed ignorance of a pistol and ammunition clip in plain view arrested Miller believing he was Hill.

> "They were quite wrong as it turned out, and subjective good-faith belief would not in itself justify either the arrest or the subsequent search. But sufficient probability, not certainty, is the touchstone of reasonableness under the Fourth Amendment and on the record before us the officers' mistake

> was understandable and the arrest a reasonable response to the situation facing them at the time." 401 U.S. at 804.

Consequently, although Miller was later released, evidence discovered during a search of Hill's apartment incident to Miller's arrest was held admissible against Hill.

Hill did not reach this conclusion by reasoning either that the police had "probable cause" to arrest Miller, or that exclusion of evidence cannot deter reasonable mistakes of fact. Accordingly, Hill teaches that an officer's reasonable mistake of fact in identifying a person lawfully subject to arrest is not an "unreasonable" seizure within the meaning of the Fourth Amendment.

Indisputably, Hill would have reached the same result had the police possessed an arrest warrant when they went to Hill's apartment. An officer's reasonable mistake as to the identity of the person named in his arrest warrant is not constitutionally different from an officer's reasonable mistake as to the identity of the premises described in his search warrant.

When the police arrest the wrong person or search the wrong place, it makes little difference whether their mistake occurred before or after the magistrate signed the warrant. The dispositive question is whether the mistake was a reasonable one.

In this case, the Baltimore police may have erred in securing and in executing their search warrant. Unfortunately, the state appellate court was indifferent

to the reasonableness of the officers' conduct.

The affidavit of Detective Marcus avers that "your Affiant made a check with the Baltimore Gas and Electric Company and discovered that the premises of 2036 Park Avenue third floor was in the name of Lawrence McWebb." Garrison v. State 494 A.2d 193 (Md. 1985). People v. Superior Court (Fish) 101 Cal.App.3d 218, 225, 161 Cal.Rptr. 547, 551 (1980), held that a misdescription of a lot number on a search warrant originating in misinformation furnished police by the telephone company was not the product of culpable official conduct. Amicus submits that Detective Marcus did not act unreasonably in relying on the information supplied by a public utility. Of course, a finding that his reliance was negligent would call into question the application of

Franks v. Delaware, 428 U.S. 154 (1978), permitting innocent and negligent affidavit misrepresentations to contribute to probable cause supporting a warrant.

As respects the execution of the warrant authorizing a search "'on the premises' of 'Lawrence Meril McWebb,' at '2036 Park Avenue third floor apartment,'" Garrison v. State, 494 A.2d at 194, the trial court found "the officers did not know that there was more than one apartment on the third floor and nothing alerted them of such a fact until after the search had been made. . . ." Id. at 195.

On these facts, the relevant question under Hill is whether the officers reasonably believed that Garrison's apartment was actually part of McWebb's premises. An officer's reasonable mistake of fact, made while securing or executing a warrant, is not "unreasonable"

conduct within the meaning of the Fourth Amendment.

B. The Exclusionary Rule Does Not Deter Reasonable Mistakes Of Fact.

In Michigan v. Tucker, 417 U.S. 433, 447 (1974), this Court explained:

> "The deterrent purpose of the exclusionary rule necessarily assumes that the police have engaged in willful, or at the very least, negligent, conduct which has deprived the defendant of some right. By refusing to admit evidence gained as a result of such conduct, the courts hope to instill in those particular officers, or their future counterparts, a greater degree of care toward the rights of an accused. Where the official action was pursued in complete good

> faith, however, the deterrence rationale loses much of its force."

The deterrent effect of the exclusionary rule is weakest where the illegality sanctioned results from a reasonable police misapprehension of relevant facts. A decision suppressing evidence may instruct the police as to the law they should follow henceforth, but such a decision cannot alter their perception of facts in future cases. As recognized in People v. Gurley, 23 Cal.App.3d 536, 553, 100 Cal.Rptr. 407, 419 (1972), quoted in People v. Moore, 31 Cal.App.3d 919, 924, 107 Cal.Rptr. 590, 593 (1973):

> "No deterrence is involved if the officers have acted in good faith on the facts as they appeared, because presumably they will be entitled to, and

will, so act again in the future."

If, "[a]s with any remedial device, the application of the rule has been restricted to those areas where its remedial objectives are thought most efficaciously served," United States v. Calandra, 414 U.S. 338, 348 (1974), the exclusionary rule was misapplied below when the state court suppressed evidence without taking into account the reasonableness of the officers' good faith mistake of fact.

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CONCLUSION

The judgment of the Court of Appeals of Maryland should be reversed.

DATED: April 24, 1986

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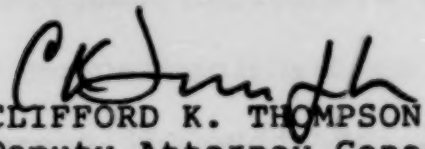

CLIFFORD K. THOMPSON, JR.
Deputy Attorney General

CKT:ds

CERTIFICATE OF SERVICE BY MAIL

THE STATE OF MARYLAND, Petitioners,	)	
vs.	)	No. 85-759
HAROLD GARRISON, Respondent.	)	

CLIFFORD K. THOMPSON, JR., a member of the Bar of the Supreme Court of the United States, states:

That his business address is 6000 State Building in the City and County of San Francisco, State of California; that on April 24, 1986, he served true copies of the attached Brief for the People of the State of California as Amicus Curiae in the above-entitled matter on counsel for respondent and petitioners by

placing same in envelopes addressed as follows:

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Said envelopes were then sealed and deposited in the United States mail at San Francisco, California, with the postage thereon fully prepaid.

CLIFFORD K. THOMPSON, JR.
Deputy Attorney General